



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 26, 2023

IN THE MATTER OF:

Appeal Board No. 629349 A

PRESENT: MARILYN P. O'MARA, MEMBER

The Appeal Board, on its motion pursuant to Labor Law § 534, has reopened and reconsidered Appeal Board Nos. 627776, 627777, 627778, filed March 30, 2023, insofar as the decisions overruled the initial determinations, holding the claimant ineligible to receive benefits, effective September 12, 2022, through September 18, 2022, on the basis that the claimant did not comply with work search requirements; charging the claimant with an overpayment of \$216.00 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the

claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100.00 on the basis that the claimant made a willful misrepresentation to obtain benefits.

Upon consideration of the entire record, the Board makes the following:

FINDINGS OF FACT: The claimant filed a claim for unemployment insurance benefits on July 6, 2022, via the telephone, and her claim was made effective as of July 4, 2022. She received but did not read the unemployment insurance handbook. The handbook advised claimants to make "systematic and sustained efforts" to find work to remain eligible for unemployment insurance benefits.

On September 12, September 13, and September 14, 2022, the claimant corresponded, via email, with a potential employer and scheduled an interview. The claimant applied for a financial sales' position, an associate store manager position, an automotive sales' manager position, and a store sales' manager position on September 14. On September 16, the claimant applied for an

assistant store manager position, an account representative position, a manager in training position, and a financial planner position. On September 18, 2022, the claimant applied for a store manager position at a fabric store.

The claimant certified for unemployment insurance benefits via telephone on September 18, for the week ending September 18, 2022. As part of the telephone certification, she affirmed that she was "actively seeking work...and (had) made at least three work search activities per week..." The claimant received \$261.00 in unemployment insurance benefits for the week ending September 18, 2022.

OPINION: We have reopened the previous Board decisions to reconsider whether the claimant performed "systematic and sustained efforts" to find work as per the May 18, 2022 revision to 12 NYCRR § 473.4 Work Search.

Pursuant to 12 NYCRR § 473.4 (a), "In order to continue to be eligible for

benefits, claimants must establish that they are ready, willing, and able to work and actively seeking work during each week for which they are claiming benefits. To be actively seeking work, a claimant must be engaged in systematic and sustained efforts, as defined in subdivisions (b) and (c), to find work. The claimant must provide proof of these work search efforts to the Department of Labor, upon request"

Pursuant to 12 NYCRR § 473.4 (b), "A claimant who fails to conduct at least

three work search activities in a week shall be ineligible for benefits for that week. The minimum work search activity shall be from those listed in subdivision (c), focused on obtaining suitable work," as defined herein. (Emphasis added).

Pursuant to 12 NYCRR § 473.4 (c), "Work search activities include:

(1) Using employment resources available at the local career center or through a virtual career center platform provided by the Department of Labor, such as:

- (i) meeting with career center advisors;
- (ii) receiving job market information from career center staff regarding the availability of jobs from a particular industry or region;

(iii) participating in skills assessments for occupation matching;
(iv) participating in instructional workshops; and
(v) obtaining and following up with employers on job referrals and job matches from the career center.

(2) Submitting a job application and/or resume to employers or former employers who may reasonably be expected to have openings.

(3) Attending job search seminars, scheduled career networking meetings, job fairs, or employment-related workshops that offer instruction in improving individual skills for obtaining employment.

(4) Interviewing with potential employers.

(5) Registering, applying, or taking job-related or pre-hire tests for a public or private employer, including civil service examinations.

(6) Registering with and checking in with private employment agencies, placement services, unions, and placement offices of schools, colleges, or universities, and/or professional organizations.

(7) Using the telephone, business directories, internet, social media, or online job matching systems to search for jobs, get leads, request referrals, or make appointments for job interviews.

(8) Any other reasonable activity that may assist a claimant to obtain employment."

Although the Judge concluded that the claimant had neglected to perform three different activities on three different days, the regulations do not impose such a requirement. As per the revised regulations, a systematic and sustained effort must include "at least three work search activities in a week" to remain eligible for unemployment insurance benefits (See 12 NYCRR § 473.4

[a-b]). So long as the claimant performed any of the activities listed in 12 NYCRR § 473.4 (c) (1-8), the work search requirements would be satisfied. We

note that the claimant not only corresponded with a specific employer via email on September 12, 2022, September 13, 2022, and September 14, 2022, to arrange for a subsequent interview, but also submitted job applications to

multiple potential employers on September 12, 14, 16 and on September 18. Hence, we find that the claimant performed the requisite minimum of at least three work search activities in a week for the week ending September 18, 2022. Accordingly, we conclude that the claimant was eligible for benefits and entitled to the unemployment insurance benefits she received for the week ending September 18, 2022.

As the claimant was entitled to the unemployment insurance benefits which she received, she cannot be said to have been overpaid benefits. Her certification, to having performed a work search, was true, known to be true, and complied with the current revised regulations. Accordingly, we conclude that neither a forfeit penalty nor a civil penalty may be imposed for a wilful misrepresentation to obtain benefits.

DECISION: The decisions in Appeal Board Nos. 627776, 627777, 627778, insofar as they were reopened and reconsidered, are rescinded.

The decisions of the Administrative Law Judge, insofar as they were reopened and reconsidered, are reversed.

In Appeal Board Nos. 629348A, 629349A and 629350A, the initial determinations, holding the claimant ineligible to receive benefits, effective September 12, 2022, through September 18, 2022, on the basis that the claimant did not comply with work search requirements; charging the claimant with an overpayment of \$216.00 in benefits recoverable pursuant to Labor Law § 597

(4); and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100.00 on the basis that the claimant made a willful misrepresentation to obtain benefits, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER